

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-214812

DATE: July 10, 1984

MATTER OF: Zinger Construction Co., Inc.

DIGEST:

Although IFB requires that bid bond signed by an agent is to be accompanied by evidence of his authority, such proof may be provided after bid opening. Accordingly, bid bond signed by agent acting within scope of his authority was properly accepted where proof of agency was submitted prior to award.

Zinger Construction Co., Inc. protests the award of a contract to any firm other than itself under invitation for bids No. N62472-83-B-0017 issued by the Department of the Navy for the replacement of water softeners at the Naval Shipyard, Philadelphia, Pennsylvania. Zinger, the apparent sixth low bidder, alleges that the five lower bids are nonresponsive due to various bid bond deficiencies.

We deny the protest.

In its initial submission to our Office, Zinger contended that the bid bonds furnished in each of the lower bids suffered from at least one deficiency. It also asserted that one of these bids included restrictions which also made that bid nonresponsive.

However, in Zinger's subsequent comments on the agency report responding to the protest, the firm stated that its basis for protest is that none of the other bids included a certification by the bidder that the person who signed the bid or the bid bond on behalf of the bidder was authorized to bind the firm. Zinger contends that since the bids of the apparent lower bidders did not include such a certificate, the bids were nonresponsive.

029396

The agency acknowledges that the apparent second low bidder submitted a nonresponsive bid, but it contends that the other four firms submitting bids lower than Zinger's submitted responsive bids. In particular, the contracting officer reports that the bid of Temp-Way Corporation, the apparent low bidder, was responsive because although its bid and bid bond were signed by someone other than an officer of the corporation--a contract supervisor--and did not include evidence authorizing that person to execute bid bonds on behalf of the firm, Temp-Way's president stated after bid opening and prior to award that the person who signed the bid documents was authorized to do so. The Navy therefore made award to Temp-Way notwithstanding the protest.

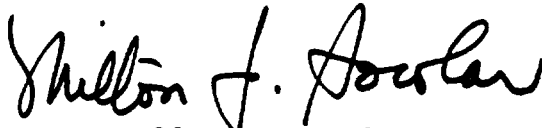
The invitation for bids required that bids be accompanied by a bid bond and instructed bidders that:

"The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished."

To be considered for award, a bid must comply in all material aspects with the invitation for bids, and bids should be filled out, executed and submitted in accordance with the instructions which are contained in the IFB. Defense Acquisition Regulation, § 2-301(a) and (c), reprinted in 32 C.F.R. pts. 1-39 (1983). However, with respect to the requirements involved here, the rule followed by our Office is that while submission of proof of bidding authority before or at the time of bid opening is encouraged in order to avoid challenges from other bidders and problems of proof before the contracting officer, it is permissible to furnish proof of an agent's authority to execute bid bonds after bid opening. Fortec Constructors; Construcciones Werl, Inc., B-180479, May 8, 1974, 74-1 CPD ¶ 235; see Burns Electronic Security Services, Inc., B-191312, Nov. 27, 1978, 79-1 CPD ¶ 1. Since evidence of the contract supervisor's authority to execute bid bonds on behalf of Temp-Way was furnished prior to award and the protester has not challenged this evidence, the bid of Temp-Way was acceptable for award.

B-214812

The protest is denied.


Acting Comptroller General
of the United States